IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929

Crl.MC.No. 898 of 2007()

CMP.344/2007 of JUDL. MAGISTRATE OF FIRST CLASS, CHANGANACHERRY

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PETITIONER:

M.RAMACHANDRA WARRIER,AGED 42 YEARS,
RESIDING AT ANANTHAPURTHU WARIEM,PUZHAVATHU KARA,
CHANGANACHERRY VILLAGE,DO TALUK.

BY ADV. SRI.K.JAGADEESCHANDRAN NAIR
SMT.DIVYA C BALAN

RESPONDENTS:

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1. SMT.JAYASRI,W/O.RAMACHANDRAN WARRIER,
AGED 40 YEARS,RESIDING AT ANANTHAPURTHU WARIEM,
PUZHAVATHU KARA,CHANGANACHERRY VILLAGE,DO TALUK.
PRESENTLY RESIDING AT CHERIYIL HOUSE,PUZHAVATHU
KARA,CHANGANACHERRY VILLAGE,DO TALUK.

2. STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.898 of 2007

Dated this the 26th day of March, 2007

ORDER

The petitioner is the respondent in a petition filed under Section 12 of the Protection of Women from Domestic Violence Act (hereinafter referred to as `the D.V Act'. The respondent herein has sought orders under Sections 18 and 19 of the D.V Act against the petitioner herein. Various contentions were raised in defence by the petitioner. It is unnecessary to encumber records with a narration of all those contentions. The petitioner appears to have raised a question on the maintainability and the learned Magistrate obligingly took up that question on maintainability as a preliminary issue. I am not too sure that such a dispute regarding maintainability need, at all, be decided by the learned Magistrate as a preliminary issue considering the mandate of Section 13 for expedition and also in the nature of the disputes raised in this case. Be that as it may, the learned Magistrate, by the impugned order held the petition under Section 12 of the D.V Act to be maintainable. The matter has been posted now for evidence. It is at that stage that the petitioner has rushed to this Court with this petition under Section 482 Cr.P.C.

2. I must alertly remind myself of the nature, quality and contours of the jurisdiction under Section 482 Cr.P.C. It is an extraordinary inherent jurisdiction. It is not to be invoked as a matter of course. Has there been failure of justice ? Is there miscarriage of justice ? Is there abuse of process of the Court ? These are the crucial questions to be considered by the Court in a petition under Section 482 Cr.P.C.

3. That there is no legal and valid marriage; that there is no shared residence; that there is no domestic violence etc. are the contentions raised. Having heard the learned counsel for the petitioner, I am certainly not satisfied that this is a fit case where any orders must be passed at this stage invoking the jurisdiction under Section 482 Cr.P.C. It is for the petitioner to raise all his contentions on merits before the learned Magistrate and for the learned Magistrate to pass appropriate orders in accordance with law. The petitioner shall be entitled to raise all his relevant contentions before the learned Magistrate. If the petitioner is aggrieved by any order that is passed under Sections 18 to 23 of the D.V Act, certainly an appeal would be maintainable under Section 29 of the D.V Act. I am not in these circumstances persuaded to issue any directions in the matter now invoking the powers under Section 482 Cr.P.C. The apprehension of the petitioner that the orders to be passed may be sought to be

implemented even before an appeal is filed and interim order obtained under Section 29 of the Act, does not also appeal to me to be reasonable. Copy of the order has got to be issued by the learned Magistrate in accordance with Section 24 of the D.V Act also.

4. Suffice it to say that I find absolutely nothing wrong in the impugned order to justify the invocation of the inherent jurisdiction under Section 482 Cr.P.C.

5. This Crl.M.C is, in these circumstances, dismissed.

(R.BASANT, JUDGE)

rtr/-